



DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

[No. DOI-2016-0006; 16XD4523WS DS10200000 DWSN00000.000000 WBS DP10202]

RIN 1093-AA21

Freedom of Information Act Regulations

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: This rulemaking would revise the regulations that the Department of the Interior (Department) follows in processing records under the Freedom of Information Act in part to comply with the FOIA Improvement Act of 2016. The revisions would clarify and update procedures for requesting information from the Department and procedures that the Department follows in responding to requests from the public.

DATES: Comments on the rulemaking must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on the rulemaking by either of the methods listed below. Please use Regulation Identifier Number 1093-AA21 in your message.

1. Federal eRulemaking Portal: <http://www.regulations.gov>. In the “Search” bar, enter DOI-2016-0006 (the docket number for this rule) and then click “Search.” Follow the instructions on the website for submitting comments.
2. U.S. mail, courier, or hand delivery: Executive Secretariat – FOIA regulations, Department of the Interior, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Cindy Cafaro, Office of Executive Secretariat and Regulatory Affairs, 202-208-5342.

SUPPLEMENTARY INFORMATION:

I. Why we're publishing this proposed rule and what it does.

In late 2012, the Department published a final rule updating and replacing the Department's previous Freedom of Information Act (FOIA) regulations. In early 2016, the Department updated that final rule, primarily to authorize the Office of Inspector General (OIG) to process their own FOIA appeals. On June 30, 2016, the FOIA Improvement Act of 2016, Pub. L. 114-185, 130 Stat. 538 (the Act) was enacted. The Act specifically requires all agencies to review and update their FOIA regulations in accordance with its provisions, and the Department is making changes to its regulations accordingly. Finally, the Department has received feedback from its FOIA practitioners and requesters and identified areas where it would be possible to further update, clarify, and streamline the language of some procedural provisions. Therefore, the Department is proposing to make the following changes:

- Section 2.4(e) would be amended to provide additional guidance on how bureaus handle misdirected requests.
- Section 2.15 would be amended to bring attention to the Department's existing FOIA Request Tracking Tool (<https://foia.doi.gov/requeststatus>).
- Section 2.19 would be amended to bring further attention to the services provided by the Office of Government Information Services (OGIS), in accordance with the provisions of the Act.
- Section 2.21 would be amended to reflect that the OGIS would be defined earlier in the regulations than it previously had been.

- Section 2.24 would be amended to require a foreseeable harm analysis, in accordance with the provisions of the Act, and to require bureaus to provide an explanation to the requester when an estimate of the volume of any records withheld in full or in part is not provided.
- Section 2.37(f) would be amended to reflect the provisions of the Act.
- Section 2.39 would be amended to remove what would be superfluous language, after the changes to section 2.37(f).
- Section 2.58 would be amended to provide more time for requesters to appeal, in accordance with the provisions of the Act.

II. Compliance with laws and executive orders.

1. Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order (E.O) 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rulemaking is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act.

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

3. Small Business Regulatory Enforcement Fairness Act.

This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act.

This rulemaking does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This rulemaking does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

5. Takings (E.O. 12630).

In accordance with Executive Order 12630, this rulemaking does not have significant takings implications. A takings implication assessment is not required.

6. Federalism (E.O. 13132).

In accordance with Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It would not substantially and directly affect the relationship between the Federal and state governments. A federalism summary impact statement is not required.

7. Civil Justice Reform (E.O. 12988).

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rulemaking does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

8. Consultation with Indian Tribes (E.O. 13175).

Under the criteria in Executive Order 13175, we have evaluated this proposed rule and determined that it has no potential effects on federally recognized Indian tribes. This rulemaking does not have tribal implications that impose substantial direct compliance costs on Indian Tribal governments.

9. Paperwork Reduction Act.

This proposed rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required.

9. National Environmental Policy Act.

This rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (NEPA), is not required. Pursuant to 43 CFR 46.205(b) and 43 CFR 46.210(i), the Department of the Interior NEPA implementing procedures exclude from preparation of an environmental assessment or impact statement “[p]olicies,

directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature....” None of the extraordinary circumstances listed in 43 CFR 46.215 exists for this rulemaking. Accordingly, this proposed rule is categorically excluded from environmental analysis under 43 CFR 46.210(i).

10. Effects on the Energy Supply (E.O. 13211)

This rulemaking is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. This rulemaking will not have a significant effect on the nation’s energy supply, distribution, or use.

11. Clarity of this proposed regulation.

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "**ADDRESSES**" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

12. Public availability of comments.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 43 CFR Part 2

Freedom of information

Kristen J. Sarri,

Principal Deputy Assistant Secretary for Policy, Management, and Budget.

For the reasons stated in the preamble, the Department of the Interior proposes to amend part 2 of title 43 of the Code of Federal Regulations as follows:

PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

1. The authority citation for part 2 continues to read as follows:

AUTHORITY: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

Subpart B—How to Make a Request

2. In § 2.4, revise paragraph (e) to read as follows:

§ 2.4 Does where you send your request affect its processing?

* * * * *

(e) If your request is received by a bureau that believes it is not the appropriate bureau to process your request, the bureau that received your request will attempt to contact you (if possible, via telephone or email) to confirm that you deliberately sent your request to that bureau

for processing. If you do not confirm this, the bureau will deem your request misdirected and route the misdirected request to the appropriate bureau to respond under the basic time limit outlined in § 2.17 of this part.

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Subpart D—Timing of Responses to Requests

§ 2.15—[Amended]

3. In § 2.15, add paragraph (g) to read as follows:

§ 2.15 What is multitrack processing and how does it affect your request?

* * * * *

(g) You may track the status of your request, including its estimated processing completion date, at <https://foia.doi.gov/requeststatus/>.

§ 2.19—[Amended]

4. In § 2.19(b)(2), add the words “, and notify you of your right to seek dispute resolution from the Office of Government Information Services (OGIS)” after the words “you and the bureau”.

Subpart E—Responses to Requests

§ 2.21—[Amended]

5. In § 2.21(a), the second sentence, remove the words “Office of Government Information Services (OGIS)” and add in their place “the OGIS”.

§ 2.24—[Amended]

6. Amend § 2.24 by:

a. In paragraph (b)(3), adding the words “, along with a statement that the bureau reasonably foresees that disclosure would harm an interest protected by the applied exemption(s) or disclosure is prohibited by law” after the words “or in part”; and

b. In paragraph (b)(4), adding the word “including” after the word “unless” and adding the words “and the bureau explains this harm to you” after the words “withhold the records”.

Subpart G—Fees

§ 2.37—[Amended]

7. In § 2.37, revise paragraph (f) to read as follows:

§ 2.37 What general principles govern fees?

* * * * *

(f) If the bureau does not comply with any time limit in the FOIA:

(1) Except as provided in paragraph (f)(2) of this section, the bureau cannot assess any search fees (or, if you are in the fee category of a representative of the news media or an educational and noncommercial scientific institution, duplication fees).

(2)(i) If the bureau has determined that unusual circumstances apply (as the term is defined in §2.70 of this part) and the bureau provided you a timely written notice to extend the basic time limit in accordance with § 2.19 of this part, the noncompliance is excused for an additional 10 calendar days. If the bureau fails to comply with the extended time limit, the bureau may not assess any search fees (or, if you are in the fee category of a representative of the news media or an educational and noncommercial scientific institution, duplication fees).

(ii) If the bureau has determined that unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, the noncompliance is excused if, in accordance

with § 2.19 of this part, the bureau has provided you a timely written notice and has discussed with you via written mail, email, or telephone (or made not less than 3 good-faith attempts to do so) how you could effectively limit the scope of the request.

(iii) If a court has determined that exceptional circumstances exist (as that term is defined in §2.70 of this part), the noncompliance is excused for the length of time provided by the court order.

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§ 2.39—[Amended]

8. In § 2.39, remove the paragraph (a) designation and remove paragraph (b).

Subpart H—ADMINISTRATIVE APPEALS

§ 2.58—[Amended]

9. In § 2.58(a) and (b), remove the number “30” and add in its place the number “90”.

BILLING CODE 4334-63

